

MEMORANDUM OF LAW IN Support Of The PLAINTIFFS Motion For The Appointment Of Counsel,

STATEMENT OF CASE **FILED**

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This is A CIVIL RIGHTS CASE filed under 42. U.S.C. 1983 by Christopher ERWIN who was hospitalized after serious automobile accident, then wrongfully removed and transported against his WILL for medical care to county jail. Complaint is due to AN UNLAWFUL SEIZURE AND DENIAL OF DUE PROCESS AND medical treatment that was prescribed to him by Doctors and Specialists, At University of Pittsburgh medical center, prior to his removal. Complaint has other various violations of plaintiff's rights as well.

STATEMENT OF FACTS

The Complaint ALLEGES that the Plaintiff was UNLAWFULLY removed from hospital care against his will and that the defendants continually denied Plaintiff medical care required by hospital's Doctors, Specialists as well as Physical Therapy due to serious automobile accident, and denial of Due Process and that ALL Defendants are deliberate indifferent to his medical care denial and other CONTINUAL UNLAWFUL ACTS committed against him.

ARGUMENTS Supportive of Counsel

(1) The Plaintiff's Ability to Present his Own Case.

Plaintiff has mental Disability that prevents him from understanding what he reads, AND comprehending. Plaintiff is not well educated, AND has NO prior Litigation experience, AND cannot correctly Litigate Complaint, or explain factors correctly to get True meaning out of them, to state facts that would prove A Serious, and complex case.

Plaintiff's ability to file and respond to Motions does indicate he has some legal knowledge AND is Literate, Plaintiff has NO Idea how to deal with complex discovery rules that will be required to support Plaintiff's case.

see Tarbow V. Grace 6 F.3d 152 (C.A.3(PA.) 1993)

In Tarbow, the indigent prisoner filed interrogatories and responded to motions, but the court found this inconclusive. Instead, the Tarbow court found that the prisoner's lack of legal experience and the complex discovery rules clearly put him at a disadvantage in countering the defendant's discovery tactics, Tarbow at 158.

(2) The complexity of the legal issues.

Plaintiff believes the case has complex factual and legal issues that he cannot handle very well.

The Eighth Amendment Denial of medical Care, Deliberate Indifference, is one of plaintiff's Claims, it will probably be necessary to present a medical expert witness or to cross-examine medical witnesses called by Defendants or both, The presence of medical or other issues requiring expert testimony supports the appointment of counsel, ~~And~~ The sheer number of Claims and large number of defendants, presents complex legal issues of determining which defendants were sufficiently personally involved in the constitutional violations to be held liable, in addition, the plaintiff has asked for a jury trial, which requires much greater legal skill than the plaintiff has or can develop. See Abdullah V. Gunter, 949 F.2d 1032, 1036 (8th Cir 1991) (citing jury demand as a factor supporting appointment of counsel), cert. denied, 112 S.Ct 1995 (1992)

where the legal issues are complex, it will probably serve everyone involved if counsel is appointed, see Tarbow V Grace 6 F.3d at 156

See MACLIN V. FRAKE, 650 F.2d at 889 (C.A. 7 (Ind.) 1981) ("Where the law is not clear, it will often best serve the ends of justice to have both sides of a difficult legal issue presented by those trained in legal analysis.")

See Parham V. Johnson 126 F.3d 454, (C.A. 3 (Pa.) 1997) Parham at 459 "In this case, the ultimate issue -

- Appears relatively simple - whether Dr. Johnson was deliberately indifferent to Parham's serious medical needs. A Lay person, like Parham, should be able to comprehend what he has to prove when the legal issue is understandable.

However, comprehension alone does not equal ability to translate the understanding into presentation. While the ultimate issue may be comprehensible, courts must still look to the proof going towards the ultimate issue and the discovery issues involved.

(3) The degree to which factual investigation will be necessary and the ability of the Plaintiff to pursue investigation.

The Plaintiff's case requires extensive documentary discovery, depositions of Police Officers, Hospital Doctors depositions, Medical records, depositions of Prison Officials, Doctors, nurses, wardens. Expert Testimony may be necessary, and Counsel would have much better opportunity to obtain an expert than would an indigent prisoner.

See Tarlow v. Grace 6 F.3d at 156. The Tarlow court noted that courts should consider a prisoner's predicament in attempting to obtain facts, i.e., the confines of prison. Also see Rayes v. Johnson, 969 F.2d at 704 (2d Cir 1989) (noting the difficulties prisoner plaintiffs with meritorious cases may have with discovery.)

Further, courts should be aware that, it may be difficult for indigent plaintiffs to understand the complex discovery rules.

See Abdullah v. Gunter, 949 F.2d at 1036

(Noting need for counsel to investigate the application of AND alternatives to a challenged prison regulation)

See Tucker v. Randall, 948 F.2d 388, 391-92

(7th Cir 1991) (Noting that prisoner could not effectively investigate case arising at a jail from which he had been transferred) In the current case before court plaintiff Irwin is at a state facility and has been transferred from (W.C.C.F.) County Jail where most of Defendants work and Defendants Chartiers Twp, Police Dept, and Sheriff John Doe, Doctor John Doe (U.P.M.C.) Plaintiff is approximately $2\frac{1}{2}$ hours away from Defendants and is state prisoner with no way to receive documents or depositions or even know how to go about it,

See Parham v. Johnson 126 F.3d at 461, (CA, 3(PA) 1997). We find that the facts here are sufficient that a jury could reasonably find that the care received by Parham while incarcerated rose to the level of Eighth Amendment deliberate indifference, and appointment of counsel was therefore appropriate.

(4) The Amount A Case is Likely to Turn On Credibility Determinations.

The plaintiffs account of his Denial of medical Treatment and Physical Therapy, is squarely in conflict with the Defendants Counsel's Answers to Plaintiffs Complaint, and in conflict that the Charters Defendants were responsible at all or that Plaintiffs Allegations can be proved. This aspect of the case will be a credibility contest between the defendants and the Plaintiff (and such imate witnesses as can be located.) The existence of these credibility issues supports the appointment of Counsel. See GATSON V COUGHLIN, 679 F. Supp. 270, 273 (W.D.N.Y. 1988)

See MACLIN V. FREAKE, 650 F.2d at 888
("Counsel may be warranted where the only evidence presented to the factfinder consists of conflicting testimony.") The MACLIN Court explained that when witness credibility is a key issue, "it is more likely that the truth will be exposed where both sides are represented by those trained in the presentation of evidence and in cross examination."

See ALSO MANNING V. LOCKHART, 623 F.2d 536, 540, (8th Cir. 1980) (holding that the district court abused its discretion in refusing to appoint counsel where claims were nonfrivolous and the question of fact turned on witness credibility.)

1/1N The case before the Court Plaintiff Irwin was committed at the Washington County Correctional Facility, with release papers from Hospital's Doctor stating that Plaintiff needed Medical Care and Physical Therapy, in which he did not receive, and that Sheriff and Chariters Defendants did not ensure that Plaintiff stayed in hospital to receive professional care. They removed him regardless of his serious and chronic injuries and mental agony he suffered, because of serious automobile accident. If Plaintiff's Factual claims that prison authorities exhibited deliberate indifference as well as police authorities to his serious medical needs which if proved would show a violation of his Eighth Amendment right not to be subjected to cruel and unusual punishment, ESTELLE V. GAMBLE, 429 U.S. 97, 97 S. CT. 285, 50 L. Ed. 2d 251 (1976)

Plaintiff Irwin will need Attorney to help sort out and investigate, Chariters Defendants to properly litigate the current case, as well as their responsibilities or involvement.

Plaintiff will need legal assistance to sort out facts and who is responsible, due to large number of Defendants, and Plaintiff's lack of discovery experience, or litigation experience.

(5) Whether The case will require the Testimony of Expert witnesses.

PLAINTIFF claims he was denied medical care, AND has mental health issues it would probably be necessary to present A medical expert witness or to cross-examine medical witnesses called by the defendants or both. The presence of medical or other issues requiring expert testimony supports the appointment of counsel. See

Moore v. Mabius, 976 F.2d 268, 272 (5th Cir. 1992)
JACKSON V. COUNTY OF McLEAN, 953 F.2d 1070, 1073 (7th Cir. 1992)
TUCKER V. RANDALL, 998 F.2d 388, 392 (7th Cir. 1991)

See Boring v. Koakiewicz, 883 F.2d 468, 473 (3d Cir. 1987) (Holding that expert testimony is necessary when the seriousness of injury or illness would not be apparent to a lay person).

PLAINTIFF believes current case before the court requires expert testimony.

(6) Whether the PLAINTIFF CAN ATTAIN AND AFFORD COUNSEL ON HIS OWN BEHALF.

PLAINTIFF Filed 2 motions with court for the appointment of counsel, PLAINTIFF is -

INDIGENT AND CAN NOT AFFORD COUNSEL,
PLAINTIFF ALSO SENT 6 LETTERS TO
ATTORNEYS AFTER HE WAS DENIED COUNSEL
BY DISTRICT COURT MAGISTRATE, SEE ATTACHMENT
OF LETTER SENT OUT AND TO LAWYERS IT WAS SENT
TO.

PLAINTIFF SHOULD BE APPOINTED COUNSEL
DUE TO HE TRIED TO ATTAIN COUNSEL AND
RECEIVED NO RESPONSE AND DUE TO HIS INCAPACITY
BECAUSE OF HIS IMPRISONMENT CAN NOT AFFORD
COUNSEL ON HIS OWN BEHALF, AND PLAINTIFF'S
CASE HAS MERIT. (HOWEVER WHERE A PLAINTIFF'S
CASE APPEARS TO HAVE MERIT AND MOST OF THE
A FOREMENTIONED FACTORS HAVE BEEN MET, COURTS SHOULD
MAKE EVERY ATTEMPT TO OBTAIN COUNSEL.) SEE, E.G.,
MALLARD V. UNITED STATES DISTRICT COURT, 490
U.S. 296, 310, 104 S. CT, 1814, 1822-23, 104
LED, 2d 318 (1989) ("IN A TIME WHEN THE NEED
FOR LEGAL SERVICES AMONG THE POOR IS GROWING AND
PUBLIC FUNDING FOR SUCH SERVICES HAS NOT KEPT PACE,
LAWYERS' ETHICAL OBLIGATION TO VOLUNTEER THEIR
TIME AND SKILLS PRO BONO PUBLICO IS MANIFEST"),
TARBON, 6 F.3d, AT 157 ("REPRESENTATION OF
INDIGENT LITIGANTS IS NOT ONLY AN IMPORTANT
RESPONSIBILITY OF MEMBERS OF THE BAR, BUT IT ~~WAS~~ ALSO
PROVIDES AN EXCELLENT OPPORTUNITY FOR NEWER ATTORNEYS
TO GAIN COURTROOM EXPERIENCE.") THE TARBON FACTORS
WILL ENSURE THAT COURTS DO NOT APPOINT COUNSEL TO FRIVOLOUS CASES.

CONCLUSION

For the foregoing reasons, the Court should grant the Plaintiff's motion and appoint counsel in this case.

Dated 3/3/06

Respectfully submitted

Christopher Irwin

VERIFICATION

I have read the foregoing memorandum of law and hereby verify that the matters alleged therein are true, I certify under penalty of perjury that the foregoing is true and correct.

Executed at ALBION PENNSYLVANIA on
3/3/2006



Christopher Irwin

Sir I am a prisoner at S.C.I. Albion and have filed a civil rights action against Washington County Correctional Facility of Washington PA. and also against the Chartiers TWP. Police DEPT. The complaint is for false arrest, medical issues, et.

The judge will not appoint counsel in this case. The judge states that it appears that the plaintiff is litigate, and that he has presented the deliberate indifference standard well, and that the case has merit and passes the threshold analysis and this court must consider the six factors. However after considering all of the factors and considerations plaintiffs claims are not sufficiently extraordinary to require counsel.

Now the defendants lawyer from Chartiers TWP. Police DEPT. filed a motion to dismiss plaintiffs amended complaint, due to "Time barred" and statute of limitations. I know there is a way around that and I am having trouble with it. I filed a motion for extension of time.

I would greatly appreciate it if you could take this case or help me in this matter. I also need a response soon, so that I do not run out of time.

Thank you for your time in this matter.

Sincerely _____

CHRISTOPHER IRWIN
FM-6896
10745 Route, 18
Albion PA. 16475-0002

C.A.NO. 04-246 ERIE

Dated 22nd of July 2005

Exhibit

Addresses PLAINTIFF Sent EXhibit To
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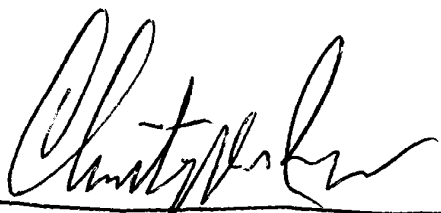
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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the within, PLAINTIFF ~~CHRISTOPHER~~ IRWIN'S MOTION TO AMEND/CORRECT COMPLAINT AND memorandum of law supportive of appointment of counsel AND Brief in support of Complaint has been served on this 3rd day of March 2006, UPON ALL parties individually by First Class, MAIL POSTAGE Pre-Paid.

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By 
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